COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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BERKSHIRE GAS COMPANY	)	**D.T.E. 04-47**
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INITIAL BRIEF OF THE ATTORNEY GENERAL

Respectfully submitted,

THOMAS F. REILLY

ATTORNEY GENERAL

By: Karlen J. Reed
Assistant Attorney General
Utilities Division
Public Protection Bureau
One Ashburton Place
Boston, MA 02108
(617) 727-2200

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I. INTRODUCTION

Pursuant to the July 26, 2004 briefing schedule the Department of Telecommunications and Energy ("Department" or "DTE") set in this proceeding, the Attorney General submits his Initial Brief responding to the Petition of Berkshire Gas Company ("Berkshire" or "Company"). Berkshire petitioned the Department on April 27, 2004 for approval of a three-year gas portfolio optimization agreement ("2004 Agreement") and a gas sales and purchase agreement ("2004 Gas Sales and Purchase Agreement") that the Company executed with BP Energy Company ("BP") on March 22, 2004. The 2004 Agreement is similar to gas optimization agreements that Energy East, Berkshire's parent holding corporation, and other Energy East affiliate local distribution companies ("LDCs"),[1] executed with BP to create a group of companies ("Alliance") to optimize their combined gas supply asset portfolios. Exh. BG-2, at 3-4.

II. OVERVIEW AND PROCEDURAL HISTORY

The Company testified that BP will play no role in any new contracts between the Company and third parties, although the Company will coordinate purchases of all non-BP gas

[1] The affiliate LDCs are Connecticut Natural Gas, Southern Connecticut Gas Company, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation. Exh BG-2, at 3.

through the Alliance. Exh. BG-2 at 10; Exh. DTE 1-5; Exh. AG 1-16. According to the Company, it will retain control over its own gas supply assets under the 2004 Agreement. *Id.*; Exh. DTE 1-22. The 2004 Agreement contains a three-year term that began April 1, 2004 and ends March 31, 2007. Exh. BG-4, at 10. Berkshire claims the 2004 Agreement is similar to previous agreements that the Department approved in 2001[2] and 2002.[3]

Berkshire also seeks margin sharing treatment for its optimized savings, asserting that the 2004 Agreement is consistent with the principles described in *Interruptible Transportation*, DPU 93-141-A (1996). Tr. 1, at 23. Specifically, the Company contends that optimized savings are analogous to two Department-approved margin sharing categories -- capacity release and off-system sales. *Id.* The Company proposes to retain 25% of the optimized savings allocated to the Company. Tr. 1, at 32.

On June 4, 2004, Berkshire Gas pre-filed the direct testimony of Berkshire Gas President, Chief Operating Officer, and Treasurer Karen Zink in support of the Company's 2004 Agreement. The Department opened an investigation into the Company's proposal on July 2, 2004. On July 19, 2004, the Attorney General intervened as of right pursuant to G.L. c. 12, §11E. On July 21, 2004, NSTAR Gas Company filed a petition to request limited participant status. On July 23, 2004, the Department conducted a public hearing and convened a procedural conference to establish a schedule for discovery, hearings and briefs. The Department allowed NSTAR Gas Company to intervene as a limited participant. During August and September, 2004, the Attorney General and the Department each issued two sets of discovery requests. The

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[2] *Berkshire Gas*, DTE 01-41, Order (2001).

[3] *Berkshire Gas*, DTE 02-19, Order (2002).

Company filed two annual reports on the 2002 Optimization Agreement on June 17, 2003 (Exh. AG 1-4) and August 5, 2004 (Exh. AG 1-31) and its audit report for the 2002 Optimization Agreement ("2002 Audit Report") on September 17, 2004 (Exh. DTE 1-25[b] [Supp.]).

The Department conducted evidentiary hearings on September 9, 2004; the Company presented Karen Zink as its only witness. Neither the Department nor the Attorney General presented any witnesses.

III. STANDARD OF REVIEW

In evaluating a gas utility's options for the acquisition of commodity resources and for the acquisition of capacity, the Department, pursuant to G.L. c. 164 § 94A, examines whether the acquisition of the resource is consistent with the public interest. *Berkshire Gas,* D.T.E. 01-41, Order at 9 (2001); *Commonwealth Gas Company*, D.P.U. 94-174-A at 27 (1996). To determine whether the proposed acquisition of a resource is consistent with the public interest, the Department evaluates whether, at the time of the acquisition or contract renegotiation, the transaction (1) was consistent with the company's portfolio objectives, and (2) compared favorably to the range of alternatives reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation. *Id.*

As part of its evaluation of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage, and commodity options available to the LDC at the time of the acquisition, as well as with those opportunities available to other LDCs in the region. *Id.* In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives including, but not limited to, flexibility of nominations and reliability and diversity of supplies. *Id.* at 29.

The Department has established that a request for proposal ("RFP") process will be deemed acceptable if the process was "fair, open and transparent." *NOI - Gas Unbundling*, D.T.E. 98-32-B at 54-55 (1999). In determining whether to grant authority to employ the proposed derivative instruments, the Department first will consider the purpose of the instruments and then consider the effects on ratepayers. *Berkshire Gas*, D.T.E. 03-89, Order at 30 (2004). It is necessary to consider the advantages and disadvantages of the use of derivative transactions to ratepayers, and to consider the extent to which the Company's control mechanisms may prevent or reduce the risk of harm. *Id.* at 31.

IV. ARGUMENT

The Company has portrayed the 2004 Agreement as a minor revision of the 2002 Optimization Agreement that the Department has already approved and contends that approving the 2004 Agreement is in the public interest. Exh. BG-2 at 10. The evidence shows, however, that the Company turned a willing blind eye to BP's potential mismanagement of Company gas assets under the 2002 Agreement by failing to enforce filing deadlines for annual reports.[4]

A. The Company Has Not Shown That The 2004 Agreement Is In The Public Interest, So The Department Should Reject The 2004 Agreement.

The 2004 Agreement is not consistent with the public interest because the Company lacks the necessary internal and external control mechanisms that will prevent BP from using

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[4] In DTE 02-19, the Department required the Company to submit annual reports within 60 days from the end of every Contract Year (*i.e.*, May 30) that: (1) reflect detailed documentation of all BP transactions under the 2002 Optimization Agreement, (2) state any refinements made to the allocation methodology, (3) list the savings dollars accrued to the Company, (4) describe how savings were generated and allocated between the LDCs, (5) summarize the BP transactions on behalf of the Company, (6) highlight problems that arose during implementation of the 2002 Agreements, and (7) state how the Company and BP dealt with the implementation problems. *Berkshire Gas,* DTE 02-19, Order at 19. The Company filed its 2003 Report on June 13, 2003 (Exh. AG 1-4), and the 2004 Report on August 5, 2004 (Exh. AG 1-31).

derivative transactions for speculative purposes.[5] For example, the Company did not insist that BP retain and provide complete, detailed information of BP's derivatives activity to the Energy East auditing team.[6] Second, the 2004 Agreement requires BP to comply with the Energy East's derivatives policy, but the Department has never explicitly examined or approved the derivatives policy. Exh BG-4, Sections 2.6 and 6.2(c), p. 37.[7] Third, the Energy East managing team, of which the Company is a member, did not enforce its own derivatives policy during the term of the 2002 Agreement the Company and Energy East viewed BP's transactions as outside the scope of the Energy East Derivative Policy. Exh. AG RR-3.[8] Fourth, the Company also admitted that BP provided the Energy East Audit Committee with no materials regarding BP's derivative transactions. *Id.*

Fifth, the Company failed to produce the 2002 Audit Report (Exh. DTE 1-25[b] Supp.) to

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[5] The Department permits the use of derivatives as a hedging device, but not as speculative investment. *Berkshire Gas,* D.T.E. 01-41, Order at 14 (2001).

[6] The Company testified that Energy East did not consider BP's derivative activity within the reporting requirements of the Energy East derivatives policy, and so Energy East did not require BP to submit derivative transaction information to the Energy East Audit Committee for review. RR AG-3.

[7] The Company initially stated that the Department had approved the Energy East Derivative Policy (Exh. AG 1-14), but the Department has made no such finding. Where issues have not been raised or adjudicated in a prior proceeding, the Department's decision is such a case does not represent the Department's determination that any specific project or policy is economically beneficial to the Company or its customers. *Berkshire Gas*, D.T.E. 03-89, Order at 16; *Boston Gas Company*, D.P.U. 95-66 at 7 (1995).

[8] **AG-RR-3:** Provide any materials presented to the Audit Committee of Energy East Board relating to the alliance pursuant to the derivatives policy in Exhibit B-3 to the Optimization Agreement.
Company Response: There are no materials that were presented to the Audit Committee of Energy East Board relating to the Alliance pursuant to the derivative policy. The Audit Committee is presented with information on derivatives only if an Energy East local distribution company enters into a derivative transaction and must enter that transaction on the books of the company. Since BP is executing the derivative transactions and recording those transactions on its books, the transaction is a BP transaction, not an Energy East local distribution company transaction. Therefore, there was no obligation to provide the Audit Committee with any information or data relating to the Alliance pursuant to the derivatives policy and, accordingly, there were no materials presented.

the Department and the Attorney General in time for meaningful review.[9] Sixth, the Company has intentionally withheld from the Department and the Attorney General many documents that are crucial to evaluating BP's performance under the 2002 Agreement. Exh. DTE 1-25(b) (Supp.). Finally, the 2002 Audit Report reveals serious flaws in BP's record keeping system and document retention policy.[10]

The 2004 Agreement is not in the public interest because its predecessors, the 2001 and 2002 Agreements, allowed BP to retain monetary benefits even while decreasing Berkshire's allocated savings, and the same unbalanced allocations of benefits appears in the 2004 Agreement. The Company has agreed to accept far less in terms of minimum guaranteed savings under the 2004 Agreement than the Company was entitled to receive under the 2002 Agreement.[11] The guaranteed annual minimum payment amount under the 2004 Agreement can be reduced and terminating the 2004 agreement may result in costs to Berkshire. Exhs. AG 1-8, 1-9.

Additionally, Berkshire can be held responsible for BP's actions under the scope of the agency provisions of the 2004 Agreement (Exh. BG-4, Sec. 2.4), which exposes the Company's ratepayers to an elevated risk of harm that would not be present if the Department did not

[9] At hearing, the Attorney General requested additional time to issue discovery and brief matters that the 2002 Audit Report would raise. Tr. 1, at 3-7, 12-15, 17-18. The Department took the motion under advisement and has not yet ruled on that motion.

[10] While the Company claims that BP had "the best quality back office systems" of the RFP bidders (Exh. AG 1-26), a closer examination of the Company's comparison of bids (Exh. AG 1-19[i]) reveals otherwise. This clearly indicates that the BP's back office systems should be improved and the Department should require the Company to monitor and report back on that improvement.

[11] Cf. Exh AG 1-2 (Red-line comparison of 2002 and 2004 Gas Optimization Agreements), Sec. 1.3.

approve the 2004 Agreement.[12] The 2004 Agreement contains a three-year contract term (April 1, 2004 to March 31, 2007), which exceeds the current term and permits more time to compound errors.

The Company's margin sharing proposal is not in the public interest because the Company proposes to further reduce the benefits to its customers by giving 25% of the savings to Energy East's shareholders.[13] Finally, the Company's legal fee recovery proposal is not in the public interest because the proposal will allow the Company to pass through over $118,000 in legal fees as part of the CGA above and beyond the amount recoverable under its base rate proceeding.[14]

The Company has not demonstrated that its proposal is in the public interest because the Company's weak control mechanisms (incomplete internal audits, inability to control BP's document retention policy, poor oversight of BP's record keeping and back office systems, failure to require BP to submit derivative information to the Energy East audit committee, lack of independent audits, and delayed annual reporting to the Department) do not monitor, or allow the Department to review, BP's use of derivative transactions. This lack of internal control mechanism over derivative transactions will expose the Company's ratepayers to the risk of

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[12] The Company's assertion that "The potential liabilities of Berkshire are the same under the alliance arrangement as they were without the alliance" in Exh. AG 1-13 is flatly wrong in light of the agency relationship the 2004 Agreement creates.

[13] Exh. BG-2 at 12. For example, assuming that the BP share of savings is 20%, margin sharing, alone -- without considering the impact of flowing through undetermined amounts of legal fees -- would give customers only 60% of the savings ([100% - 20% (BP's share)] x 25% (margin sharing)= 20%, the Company's share of the margin; 80% - 20% = 60% of the total savings generated under the 2004 Agreement that would flow to the customers under the Company's proposal. Based on recent performance under the 2002 Agreement, this could result in customers receiving significantly less than under prior capacity management agreements.

[14] Exh. AG 1-78.

harm from BP's poor financial decisions. *Berkshire Gas*, D.T.E. 03-89, Order at 31-32 (2004).[15] The Company has also failed to show how optimization agreements that reduce the savings available to the Company's ratepayers consistently over time, and will decrease further under the Company's margin sharing and legal fees recovery proposal,[16] are in the public interest. The Department, therefore, should reject the Company's proposal in its entirety.

B. If The Department Does Not Reject The 2004 Agreement, The Department Should Impose Conditions To Protect The Company's Ratepayers.

If the Department, nevertheless, chooses to approve the Company's proposal, the Department should protect Berkshire's ratepayers by requiring the Company to: (1) engage an independent auditor to determine that all transactions, including BP's derivative activities, and allocations are made in the best interests of Berkshire's customers; (2) file annual audit reports with the Department in a timely manner that allows comment and review by the Department; (3) seek prior approval from the Department for all proposed substantive[17] changes to the 2004 Agreement and its related agreements; (4) conduct a comprehensive audit of all BP transactions under the 2001 and 2002 Agreements to determine whether all activities BP and the Alliance performed were consistent with Department orders and precedent and were in the best interests

[15] "In view of the potential harm, the extent to which control mechanisms may prevent or reduce the risk of ratepayer harm is significant in determining whether to authorize the Company's use of derivative instruments." *Berkshire Gas,* D.T.E. 03-89, Order at 31-32 (2004).

[16] See Exh. BG-1, p. 5 and Exh. AG 1-76 ($314,000 - 2001 savings); Exh. AG 1-4 (2002 savings); Exh. AG 1-31 (2003 savings).

[17] The Company has agreed to submit all amendments and supplements to the 2004 Agreement, and all substantive changes in writing to the Department for prior approval. Exh. DTE 1-35; Exh. DTE 1-36; Tr. 1, at 79, 145, 172. The Department should define "substantive changes" as those that directly or indirectly increase the Company's ratepayers' CGA cost. Those changes include (but are not limited to): (1) the Company's participating share, (2) the allocation procedures, (3) any pricing term, including the aggregate minimum savings, and (4) the resources available to the Alliance.

of the Berkshire customers; (5) reflect the correct amount of Berkshire gas subjected to the demand/reservation charge and assess whether this results in least-cost pricing for Berkshire customers; and (6) submit a final external, independent audit report to the Department prior to seeking renewal or extension of the 2004 Agreement, and file the final audit at a time that would permit sufficient time for Department review, comment and approval before the Company issues an RFP to continue optimizing the Company's gas supply assets.

C. Margin Sharing Is Not Appropriate For Optimized Savings.

The Department now faces its first opportunity to consider whether its margin sharing precedent should include optimized savings as a component. If the Department decides to expand its margin sharing policy to allow optimized savings, the Department should require the Company to submit to internal and external audits that would provide accountability, determine that transactions were entered into solely for the benefit of Berkshire's customers, and validate all allocated savings.

1. The history of incentive regulation does not allow optimized savings.

In the early 1990s, the Department developed and implemented guidelines that served as incentives for LDCs to increase sales for the benefit of customers (off-setting fixed costs of capacity -- local and interstate). *Commonwealth Gas Company*, D.P.U. 91-60 (1991); *Essex County Gas Company*, D.P.U. 93-107 (1993); *Boston Gas Company*, D.P.U. 93-60 (1993). In D.P.U. 93-141-A, the Department created four categories of revenue eligible for margin sharing:

(1) capacity release,[18] (2) interruptible transportation,[19] (3) interruptible sales,[20] and (4) off-system sales.[21]

Under D.P.U. 93-141-A, for each category, the LDC must generate margins for each category in excess of the prior year to qualify for sharing the margins with the LDC's shareholders (or retaining the margins). If the margins for the current year for any given category are greater than the prior year, the Company increases its customers' CGA costs by 25% of that excess to capture the margin sharing benefit for its shareholders. The Department generally discourages margin sharing as a targeted incentive program. D.P.U. 93-141-A, Order at 62.

The Department did not address or consider optimization or alliance-type savings in its investigation into the issues related to margin sharing in D.P.U. 93-141-A or in the Department's investigation into the theory and implementation of incentive regulation, D.P.U. 94-158. In the Department's investigation into using risk-management techniques to mitigate natural gas price volatility, the Department rejected the use of incentive hedging programs that incorporated the use of derivatives to reduce price volatility based on its findings that incentives would be inconsistent with the Department's policy statements regarding incentive regulation and that the

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[18] Capacity release is the sale of interstate pipeline capacity to a third party. This is excess capacity held by LDC to serve customer peak needs and growth.

[19] Interruptible transportation represents the fees charged customers who agree to have their service interrupted under certain conditions (usually cold weather -- when the LDC needs the capacity to serve its heating customers).

[20] Interruptible sales represents the revenue (net of marginal cost of gas) paid by customers that receive gas provided by the LDC. Customers agree that under certain conditions the gas may not be available. Generally, these customers are able to use another fuel to serve their needs (usually oil).

[21] Off-system sales are the revenue received for LDC gas that is sold to others (usually other LDCs or electric generators). The gas is delivered to the buyer under the buyer's transportation contracts.

use of incentives could negatively affect the development of retail competition. *Risk Management Techniques to Mitigate Natural Gas Price Volatility*, D.T.E. 01-100-A, Order at 24 (2002)

The 2004 Agreement with BP presents the first case where the Department has the opportunity to determine whether the margin sharing incentive is appropriate for increasing benefits to customers under contracts that involve not only complex financial transactions, but also a variety of affiliate interests, and it is appropriate to determine what level of sharing is warranted and under what conditions. There is little difference between programs designed to mitigate price volatility and an optimization agreement program of gas cost savings. The Company states that one of the benefits of the optimization arrangement is that assists in managing risks and price stability. Exh. BG-2, p. 9. Both types of programs allow the Company to fully its recover costs from customers and, as such, may tilt the playing field against marketers -- thereby hindering the development of competition. The Department does not favor risk management plans that will not ensure fair competition in the gas supply market. D.T.E. 01-100-A, Order at 28.

2. The Department should not allow the Company to share ratepayer savings with its shareholders.

In DTE 02-19, the Department told Berkshire it must petition for approval of margin sharing based on an optimization contract that focused on savings. The Company has now filed that petition in the form of seeking approval for its 2004 Agreement. Company witness Karen Zink testified that the 2004 Agreement is like a capacity management agreement, so margin sharing principles should apply. Exh. BG-2 at 12; Exh. AG 1-58. If the Department agrees, Berkshire would retain 25% of allocated savings and would pass remaining 75% to customers through the CGA. Exh. BG-2 at 12.

The Department should not permit savings to be a component of margin sharing under D.P.U. 93-141-A because BP's 2004 Optimization Agreement is different from a capacity management deal. Capacity managers "buy" the LDC's capacity for a fixed price and commit to deliver gas to the company -- at prices that mimic what the LDC would pay if the LDC retained control of its capacity. The capacity manager is free to use capacity any way it sees fit (and can make or lose money on its own -- the LDC has no input, receives no financial benefit other than fee paid by manager and is not responsible for costs or losses incurred by manager).

The 2002 and 2004 Optimization Agreements, on the other hand, partner an LDC, Berkshire, with a gas marketer, BP, and together they enter into transactions with the goal of generating savings to be shared between them–but losses are also shared. These Optimization Agreements refer to another contract, an Allocation Agreement, that directs savings benefits that arise from the transactions BP enters into using the LDC's portfolio of capacity (transportation) and supply resources (gas and storage resources). The parties to the Alliance share gains and losses under interaction of the terms of both the Optimization and Allocation Agreements. A fundamental difference between capacity management contracts and optimization agreements is that capacity release agreements compensate for the sale of an asset (LDC's contracts portfolio), but optimization contracts do not. Instead, optimization agreements, particularly among a variety of affiliated companies with different regulatory treatments for gas costs and revenues, share benefits and costs related to complex transactions and allocate winning and losing transactions among participants. Without some confirmation that customers are truly benefitting under the terms of an optimization agreement, the Department should not approve the

Company's proposed margin sharing approach described in Exh. BG-4. Margin sharing principles should not apply.

The Company has not shown that sharing ratepayers' savings with the Company's shareholders is in the ratepayers' best interests. This showing is necessary before the Department amends its findings in D.P.U. 93-141-A to include savings as a fifth category. Combining optimization savings into a single margin sharing category, or creating a fifth category (optimized savings) for margin sharing could encourage the Company to artificially manufacture savings by encouraging the Company to use artificially high benchmark prices. This would have the effect of increasing shareholder wealth without lowering rate payers' CGA costs.

3. KeySpan is also asking to use savings in margin sharing.

The Department must consider the precedential effect of granting Berkshire's request to share optimized saving. Boston Gas/KeySpan has been sharing portfolio/capacity management fees with shareholders (to extent prior years' margins were not greater, then no sharing). KeySpan is now seeking Department approval of a contract with EKT that is very similar to the BP Optimization agreement in that sharing of "savings" is a margin component in *KeySpan*, DTE 04-9. In that case, KeySpan has incorporated an independent audit of the performance under the terms of the contract. Without knowing the specifications of KeySpan's audit, it is difficult for the Department to compare the benefits of Berkshire's internal auditing process and the independent audit to be done in the EKT contract; however, the independent status of the auditor is preferable, especially where there are affiliate transactions and allocations that may be biased to favor shareholders rather than Berkshire's customers.[22]

The Department should not allow the Company to share optimization-generated margins with the LDC's shareholders.

D. If The Department Allows Optimized Savings For Margin Sharing, The Department Should Review The Savings Calculations.

The 2004 Agreements do not contain any provision that envisions an independent assessment or audit of whether BP enters into transactions for the benefit of Berkshire's customers. Nor is there a provision that assesses whether costs and benefits are fairly and accurately allocated among participants, and the savings are real or manufactured. Without this independent assessment, the Company can not show that withholding 25% of the savings from the Company's ratepayers is in the ratepayers' best interests.

If the Department allows optimized savings as a source for margin sharing, then the Department should find that ratepayers' best interests lay in providing the Company with incentives through optimized savings only when: (1) the Company clearly demonstrates that there are proven benefits, (2) the Company conducts an independent assessment that shows the activities being encouraged have been reported accurately, (3) the activities are done for the benefit of the Company's ratepayers, and (4) any program that incorporates incentives also ensures that ratepayers receive safe, reliable and least cost service.

The margins under the Optimization Agreement is different from the capacity release and off-system sales because the Optimization agreements' transactions are interwoven and complex

[22] The Department has asked Berkshire to compare and contrast the Company's proposal with the proposal KeySpan filed in DTE 04-9. Tr. 1, at 158; RR DTE-1. This comparison is of minimal use, however, in the Berkshire docket as the KeySpan proposal is not in evidence and has not been at issue in this case.

transactions. If the Department deems the optimization costs and revenues are eligible for margin sharing, then the costs and revenues should be placed in a single or separate category that would be subject to a mandatory independent audit and Department review. The creation of a separate margin sharing category for optimization savings also would allow the LDC to take advantage of differences in opportunities from year to year without fear of falling short of the prior year's margins in a specific category (*e.g.*, capacity release versus off-system sales).

E. The Department Should Reject The Company's Attempt to Recover Legal Fees Through the CGA.

The Department set the amount of legal fees that the Company can recover in its most recent base rate proceeding, and the fees can be allocated between base rate recovery and the CGA. In Berkshire's most recent base rate case, the Department has fixed the total dollar amount of gas acquisition costs that could be recovered from customers and the costs were allocated between base rates and the CGA. Here Berkshire is attempting to increase the CGA to recover over $118,000 for legal fees the Company incurred from May 2002 to October 2002 in connection with the 2002 Optimization Agreement as "Cost to File" adjustments. Exh. AG 1-78. The Company has never before explicitly sought Department permission to recover legal expenses through its CGA until now. There is no precedent for approval, contrary to the Company's assertion that the Department's approval of the CGA implicitly approved passing along over $118,000 in legal fees to rate payers.

The Company's witness admitted during hearings that the proper method of recovering recurring legal costs is through a rate case for base rates. This is not a base rate case. The Department determined the appropriate level of gas acquisition costs and legal fees to be recovered by Berkshire in CGA and base rates in the Company's last rate case. This type of cost is recurring but there is nothing special about this activity. Furthermore, the Company has not shown that recovery of these legal fees outside of the standard base rate proceeding is in the public interest. Therefore, the Department should disallow the "Cost to file" adjustment to the CGA and order all amounts of these costs already collected from customers to be refunded as part of the upcoming peak CGA reconciliation adjustments, with interest.

V. CONCLUSION

For the foregoing reasons, the Department should require the Company to undergo annual independent audits, file annual reports consistent with all Department requirements, and petition the Department for approval of all contract amendments. Furthermore, the Department should not allow unaudited optimized savings to be considered a component of margin sharing. Finally, the Department should reject the Company's proposed recovery of legal fees through the CGA.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

By: Karlen J. Reed
Assistant Attorney General
Utilities Division
Public Protection Bureau
One Ashburton Place
Boston, MA 02108
(617) 727-2200

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